



40 CFR Part 52

[EPA-R01-OAR-2011-0879; A-1-FRL-9505-9]

Approval and Promulgation of Air Quality Implementation Plans; Massachusetts and New Hampshire; Determination of Attainment of the One-Hour Ozone Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to determine that the Boston-Lawrence-Worcester (Eastern Massachusetts), MA-NH serious one-hour ozone nonattainment area met the applicable deadline of November 15, 2007, for attaining the one-hour National Ambient Air Quality Standard (NAAQS) for ozone. This proposed determination is based upon complete, certified, quality-assured ambient air quality monitoring data for the 2005-2007 monitoring period showing that the area had an expected ozone exceedance rate below the level of the now revoked one-hour ozone NAAQS during that period and therefore attained the standard by its applicable deadline. EPA is proposing this determination under the Clean Air Act.

DATES: Written comments must be received on or before **[Insert date 30 days after publication in the Federal Register]**.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA-R01-OAR-2011-0879 by one of the following methods:

1. www.regulations.gov: Follow the on-line instructions for submitting comments.
2. E-mail: arnold.anne@epa.gov
3. Fax: (617) 918-0047.

4. Mail: "Docket Identification Number EPA-R01-OAR-2011- 0879, " Anne Arnold, U.S. Environmental Protection Agency, EPA New England Regional Office, 5 Post Office Square, Suite 100 (mail code: OEP05-2), Boston, MA 02109-3912.
5. Hand Delivery or Courier. Deliver your comments to: Anne Arnold, Manager, Air Quality Planning Unit, Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, 5 Post Office Square, Suite 100, Boston, MA 02109-3912. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding legal holidays.

Instructions: Direct your comments to Docket ID No. EPA-R01-OAR-2011- 0879. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through www.regulations.gov, or e-mail, information that you consider to be CBI or otherwise protected. The www.regulations.gov website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through www.regulations.gov your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification,

EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the www.regulations.gov index.

Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form.

Publicly available docket materials are available either electronically in www.regulations.gov or in hard copy at Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, 5 Post Office Square, Suite 100, Boston, MA. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Richard P. Burkhart, Air Quality Planning Unit, U.S. Environmental Protection Agency, EPA New England Regional Office, 5 Post Office Square, Suite 100, Boston, MA 02109-3912, telephone number (617) 918-1664, fax number (617) 918-0664, email Burkhart.Richard@epa.gov.

SUPPLEMENTARY INFORMATION:

Throughout this document whenever “we,” “us,” or “our” is used, we mean EPA.

Organization of this document. The following outline is provided to aid in locating information in this preamble:

- I. What is EPA Proposing?
- II. What is the Background for this Proposed Action?
- III. What is EPA's Analysis of Data for Purposes of Determining Attainment of the One-Hour Ozone Standard?
 - A. How Does EPA Compute Whether an Area Meets the One-hour Ozone Standard?
 - B. EPA's Analysis of the One-Hour Ozone Data for the Boston-Lawrence-Worcester, MA-NH Area
- IV. Proposed Determination
- V. Statutory and Executive Order Reviews

I. What is EPA Proposing?

EPA is proposing to determine that the Boston-Lawrence-Worcester (Eastern Massachusetts), MA-NH area attained the one-hour ozone National Ambient Air Quality Standard (NAAQS) by the applicable attainment date, November 15, 2007. This proposed determination is based upon complete, quality-assured and certified air quality monitoring data for the 2005 through 2007 ozone seasons.

II. What is the Background for this Proposed Action?

EPA designated the Boston-Lawrence-Worcester, MA-NH area as nonattainment for one-hour ozone following the enactment of the Clean Air Act (CAA) Amendments of 1990. Most areas of the country that EPA designated nonattainment for the one-hour ozone NAAQS were classified by operation of law as marginal, moderate, serious, severe, or extreme, depending on the severity of the area's air quality problem. (See CAA sections 107(d)(1)(C) and 181(a).) The

Boston-Lawrence-Worcester, MA-NH area was classified as serious. The one-hour ozone attainment deadline for the area was initially set for November 15, 1999 and later extended to November 15, 2007. See 67 FR 72574 (December 6, 2002). The Boston-Lawrence-Worcester, MA-NH one-hour ozone nonattainment area consists of all Massachusetts' counties east of, and including Worcester County, MA; along with parts of Hillsborough and Rockingham Counties in southern New Hampshire. (See 40 CFR 81.322, and 81.330.)

On July 18, 1997 (62 FR 38856), EPA promulgated a new standard for ozone based on an 8-hour average concentration (the "1997 8-hour ozone NAAQS"). EPA designated and classified most areas of the country under the eight-hour ozone NAAQS in an April 30, 2004 final rule (69 FR 23858). EPA designated Boston-Lawrence-Worcester, MA as nonattainment for the 1997 8-hour ozone NAAQS. At the time of designation the area did not meet the one-hour ozone standard. In addition, parts of southern New Hampshire were designated nonattainment for the 8-hour NAAQS. However, unlike the one-hour ozone standard, in the case of the 1997 8-hour ozone standard, southern New Hampshire was designated as a separate ozone nonattainment area. (See 40 CFR 81.330.)

On April 30, 2004, EPA issued a final rule (69 FR 23951) entitled "Final Rule To Implement the 8-Hour Ozone National Ambient Air Quality Standard — Phase 1," referred to as the Phase 1 Rule. Among other matters, this rule revoked the one-hour ozone NAAQS in most areas of the country, effective June 15, 2005. (See 40 CFR 50.9(b); 69 FR at 23996; and 70 FR 44470, August 3, 2005.) The Phase 1 Rule also set forth how anti-backsliding principles will ensure continued progress toward attainment of the eight-hour ozone NAAQS by identifying which one-hour requirements remain applicable in an area after revocation of the one-hour ozone

NAAQS. Although EPA revoked the one-hour ozone standard (effective June 15, 2005), eight-hour ozone nonattainment areas remain subject to certain one-hour anti-backsliding requirements based on their one-hour ozone classification.¹ The United States Court of Appeals for the District of Columbia Circuit subsequently determined that EPA should have retained certain additional measures as one-hour ozone anti-backsliding requirements. These include one-hour ozone contingency measures under section 172(c)(9), which are to be implemented in the event an area fails to attain by its one-hour ozone attainment date. *South Coast Air Quality Management District v. EPA*, 472 F.3d 882 (D.C. Cir. 2006) rehearing denied 489 F.3d 1245. EPA is proposing here to determine that the Boston-Lawrence-Worcester area attained the one-hour ozone standard by the applicable attainment date. Thus, if EPA finalizes its proposed determination, there will be no requirement to implement one-hour ozone contingency measures for failure to attain or any additional one-hour ozone anti-backsliding requirements.

III. What is EPA's Analysis of Data for Purposes of Determining Attainment of the One-Hour Ozone Standard?

A. How Does EPA Compute Whether an Area Has Attained the One-hour Ozone Standard?

Although the one-hour ozone NAAQS as promulgated in 40 CFR 50.9 includes no discussion of specific data handling conventions, EPA's publicly articulated position and the approach long since universally adopted by the air quality management community is that the interpretation of the one-hour ozone standard requires rounding ambient air quality data

¹ Final Rule to Implement the 8-Hour Ozone National Ambient Air Quality Standard--Phase 1, 69 FR 23951 (April 30, 2004).

consistent with the stated level of the standard, which is 0.12 parts per million (ppm). 40 CFR 50.9(a) states that: “The level of the national one-hour primary and secondary ambient air quality standards for ozone ... is 0.12 parts per million. ... The standard is attained when the expected number of days per calendar year with maximum hourly average concentrations of 0.12 parts per million ... is equal to or less than 1, as determined by appendix H to this part.” Thus, compliance with the NAAQS is based on comparison of air quality concentrations with the standard and on how many days that standard has been exceeded, adjusted for the number of missing days.

For comparison with the NAAQS, EPA has communicated the data handling conventions for the one-hour ozone NAAQS in guidance documents. As early as 1979, EPA issued guidance stating that the level of our NAAQS dictates the number of significant figures to be used in determining whether the standard was exceeded. The stated level of the standard is taken as defining the number of significant figures to be used in comparisons with the standard. For example, a standard level of 0.12 ppm means that measurements are to be rounded to two decimal places (0.005 rounds up), and, therefore, 0.125 ppm is the smallest concentration value in excess of the level of the standard. (See, “Guideline for the Interpretation of Ozone Air Quality Standards,” EPA-450/4-79-003, OAQPS No. 1.2-108, January 1979.) EPA has consistently applied the rounding convention in this 1979 guideline. See, 68 FR 19111, April 17, 2003; 68 FR 62043, October 31, 2003; and 69 FR 21719, April 22, 2004. Then, EPA determines attainment status under the one-hour ozone NAAQS on the basis of the annual average number of expected exceedances of the NAAQS over a three-year period. (See, 60 FR 3349 January 17, 1995 and “General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990,” at 57 FR 13506, April 16, 1992 (“General Preamble”).) EPA’s determination is based

upon data that have been collected and quality-assured in accordance with 40 CFR 58, and recorded in EPA's Air Quality System (AQS) database. To account for missing data, the procedures found in appendix H to 40 CFR 50 are used to adjust the actual number of monitored exceedances of the standard to yield the annual number of expected exceedances ("expected exceedance days") at an air quality monitoring site. We determine if an area meets the one-hour ozone NAAQS by calculating, at each monitor, the average expected number of days over the standard per year (i.e., "average number of expected exceedance days") during the applicable 3-year period. See, the General Preamble, 57 FR 13498, April 16, 1992. The term "exceedance" is used throughout this document to describe a daily maximum ozone measurement that is equal to or exceeds 0.125 ppm which is the level of the standard after rounding. An area violates the ozone standard if, over a consecutive 3-year period, more than 3 days of expected exceedances occur at the same monitor. For more information please refer to 40 CFR 50.9 "National one-hour primary and secondary ambient air quality standards for ozone" and "Interpretation of the one-hour Primary and Secondary National Ambient Air Quality Standards for Ozone" (40 CFR part 50, appendix H).

B. EPA's Analysis of the One-Hour Ozone Data for the Boston-Lawrence-Worcester, MA-NH Area

Table 1 shows the results of one-hour ozone data for all the ozone monitors in the Boston-Lawrence-Worcester, MA-NH area for the three-year period 2005-2007. In short, if the three-year average expected exceedances rate, shown in the far right column, is less than or equal to 1.0, the site meets the one-hour ozone NAAQS. If all sites in the area are shown to meet the

one-hour ozone NAAQS, it can be determined that the area has attained the one-hour ozone NAAQS.

Table 1. Average Expected Exceedance Rate for the One-hour Ozone Standard in the Boston-Lawrence-Worcester, MA-NH Area for 2005-2007

Massachusetts			Exceedances (Days over 0.124 ppm)		
EPA AQS ID	Site	Year	Actual	Adjusted for Missing Data	3-year Average Expected Exceedance Rate
250250041	Boston-Long Island	2005	0	0.0	0.0
		2006	0	0.0	
		2007	0	0.0	
250250042	Boston - Roxbury	2005	0	0.0	0.0
		2006	0	0.0	
		2007	0	0.0	
250170009	Chelmsford	2005	0	0.0	0.0
		2006	0	0.0	
		2007	0	0.0	
250051002	Fairhaven	2005	0	0.0	0.7
		2006	2	2.0	
		2007	0	0.0	
250095005	Haverhill	2005	0	0.0	0.0
		2006	0	0.0	
		2007	0	0.0	
250092006	Lynn	2005	0	0.0	0.0
		2006	0	0.0	
		2007	0	0.0	
250213003	Milton	2005	1	1.0	0.3
		2006	0	0.0	
		2007	0	0.0	
250094004	Newbury	2005	0	0.0	0.0
		2006	0	0.0	
		2007	0	0.0	
250070001	Oak Bluffs	2005	0	0.0	0.7
		2006	2	2.1	
		2007	0	0.0	
250171102	Stow	2005	0	0.0	0.0
		2006	0	0.0	
		2007	0	0.0	
250010002	Truro	2005	0	0.0	0.0
		2006	0	0.0	
		2007	0	0.0	
250270015	Worcester	2005	0	0.0	0.0
		2006	0	0.0	
		2007	0	0.0	

New Hampshire			Exceedances (Days over 0.124 ppm)		
EPA AQS ID	Site	Year	Actual	Adjusted for Missing Data	3-year Average Expected Exceedance Rate
330111011	Nashua	2005	0	0.0	0.0
		2006	0	0.0	
		2007	0	0.0	

As shown in Table 1, the Boston-Lawrence-Worcester, MA-NH one-hour ozone nonattainment area attained the one-hour ozone NAAQS by its attainment deadline of November 15, 2007, since all ozone monitors had expected exceedances rates below 1.0. Thus EPA is proposing to determine that, based on the 2005-2007 complete, quality-assured and certified ozone data in the AQS database, the Boston-Lawrence-Worcester, MA-NH area met the 1-hour ozone NAAQS by its applicable attainment date of November 15, 2007.

IV. PROPOSED DETERMINATION

For the reasons set forth in this notice, EPA is proposing to determine that the Boston-Lawrence-Worcester, MA-NH one-hour ozone nonattainment area met its applicable one-hour ozone attainment date of November 15, 2007, based on 2005-2007 complete, certified and quality-assured ozone monitoring data. EPA is soliciting public comments on the issues discussed in this notice or on other relevant matters. EPA will consider these comments before final action. Interested parties may participate in the Federal rulemaking procedure by

submitting written comments to the EPA New England Regional Office listed in the **ADDRESSES** section of this Federal Register.

V. Statutory and Executive Order Reviews

This action proposes to make a determination of attainment based on monitored air quality data, and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this action does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

AUTHORITY: 42 U.S.C. 7401 et seq.

Dated: December 6, 2011

H. Curtis Spalding,
Regional Administrator,
EPA New England.

[FR Doc. 2011-32059 Filed 12/13/2011 at 8:45 am; Publication Date: 12/14/2011]